

(c) Will a Federal Reserve Bank accept gold as collateral for an advance to a member bank under section 10(b) of the Federal Reserve Act? No.

[39 FR 45254, Dec. 31, 1974]

#### BANK SERVICE ARRANGEMENTS

### **§ 250.300 Kinds of bank servicers subject to Board examination under the Bank Service Corporation Act.**

*Summary.* The performance of bank services for State member banks is subject to the Board's regulation and examination, regardless of the nature of the bank servicer, including servicers that are national banks; State nonmember insured banks; non-profit, no-stock credit card servicing organizations; and servicing subsidiaries of bank holding companies.

*Text.* (a) Since the enactment of the Bank Service Corporation Act (the "Act") (12 U.S.C. 1861–1865), the Board has on several occasions considered whether performance of "bank services" (as that term is defined in section 1(b) of the Act) for State member banks is subject to regulation and examination by the Board under section 5 of the Act if—

(1) The bank servicer is not a "bank service corporation" (as that term is defined in the Act), or

(2) The bank servicer is a bank itself. In each instance, based on the reasoning set forth below, the Board expressed the view that section 5 of the Act applied to any organization that performed bank services for State member banks, including national banks; another State member bank; State nonmember insured banks; servicing subsidiaries of bank holding companies; and non-profit, no stock credit card servicing organizations.

(b) The Senate Committee on Banking and Currency stated with regard to section 5 of the Act, as enacted in 1962, that the Federal supervisory agencies "must be able to examine all of the banks' records, and they must be able to exercise proper supervision over all the banks' activities, whether performed by the banks' employees on their premises or by anyone else on or off the banks' premises. This examination and this supervision cannot be frustrated by a transfer of the banks'

records to some other organization or by having some other organization carry out all or part of the banks' functions." (S. Rep. No. 2105, 87th Cong. 3 (1962)). Similarly, the Committee on Banking and Currency of the House of Representatives stated that "it would obviously be unwise to permit banks to avoid the examination and supervision of vital banking functions by the simple expedient of farming out such functions." (H.R. Rep. No. 2062, 87th Cong. 3 (1962)).

(c) Section 5 of the Act is not limited by its terms to *bank service corporations* as defined in the Act; nor, in the Board's opinion based on the legislative history of the Act, should such a limitation be implied. The Board concludes that the performance of bank services for State member banks by organizations that are not bank service corporations is also subject to Board regulation and examination.

(d) If the bank servicer is a national bank or a State nonmember insured bank, its performance of bank services for State member banks is subject to Board regulation and examination, despite the fact that the servicer is subject primarily to regulation and examination by one of the other Federal banking agencies. By the same token, the performance of bank services by a State member bank for a national bank or State nonmember insured bank is subject to regulation and examination by the Comptroller of the Currency or the Federal Deposit Insurance Corporation, respectively. The purpose of section 5 of the Act is to make certain that the appropriate Federal banking agency will be able effectively to exercise its responsibilities with respect to a bank subject primarily to its supervision.

(e) It is important to note that the scope of the Board's regulation and examination under section 5 of the Act does not extend to all affairs of the bank servicer, but only to the *bank services* performed for a State member bank and only to the same extent as if the services were being performed by the State member bank itself on its own premises.

[44 FR 12969, Mar. 9, 1979]